IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 42 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL
and
Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? :

COMMISSIONER OF INCOME-TAX

Versus

WINDSOR FOODS LTD.

Appearance:

MR BB NAIK for Petitioner

MR RK PATEL for Respondent No. 1

CORAM : MR.JUSTICE J.M.PANCHAL
and
MR.JUSTICE M.S.SHAH

Date of decision: 16/01/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE M.S.SHAH)

In this Reference, at the instance of the Revenue, following question is referred for our opinion in respect of Assessment Year 1982-83 :

"Whether, on the facts and in the circumstances of the case and in law, the Tribunal was right in coming to the conclusion that the assessee was entitled to investment allowance on the amount of Rs. 46,717/- being the additional liability due to fluctuation in foreign exchange rate in respect of the payments of outstanding instalments of machinery ?"

2. We have heard Mr. B.B.Naik, learned counsel for the Revenue and Mr. R.K.Patel learned counsel for the assessee. The learned counsel state that the controversy raised herein is concluded by the decision of this Court in COMMISSIONER OF INCOME-TAX v. WINDSOR FOODS LTD. (this very assessee) (1999) 235 ITR 249, wherein this Court has held as under :-

"The deduction of investment allowance can be allowed in respect of the previous year in which the machinery was installed or first put to use. If the deduction becomes allowable in that relevant previous year, the full investment allowance is tobe worked out on the basis of the actual cost of the machinery or plant to the assessee at that relevant time. That quantification of the amount at 25 per cent of the actual cost to be allowed by way of deduction as investment allowance got crystallised on the basis of the actual cost and no change can be made therein for that previous year on the basis of any fluctuation that takes place in the exchange rate in the subsequent years. The fact that the investment allowance is carried forward under sub-section (3) or that the reserve can be created in any subsequent assessment year due to insufficiency of profits in the earlier years will not alter this situation. Therefore, no question of revising the full amount of the investment allowance which was already worked out in the relevant previous year can ever arise by virtue of any subsequent fluctuation in the exchange rate."

3. In view of the above principles laid down in the case of this very assessee, we answer the question in the

negative i.e. in favour of the Revenue and against the assessee. The Reference accordingly stands disposes of, with no order as to costs.

(J.M.Panchal, J.)

(M.S.Shah, J.)

(patel)